COMPTROLLER OF INCOME TAX v. CHENG POH SENG.

[Orig. Civ. Juris. (Murray-Aynsley, C.J.) March 19, 1952]

[Singapore — Special Case No. 5 of 1951]

Income Tax Ordinance, 1947, s. 59(1) — Furnishing return of income by post — Sufficient compliance.

Section 59(1) of the Income Tax Ordinance, 1947 empowers the Comptroller of Income Tax to give notice to any person to furnish a return of income. In this case a tax payer completed the form of return and sent it through the post in the envelope provided with the form.

Held, that such posting was a sufficient compliance with the section.

INCOME TAX CASE.

L. Rayner (Crown Counsel) for the Comptroller of Income Tax.

Murray-Aynsley, C.J. : — In this case the question was whether proof of posting was a sufficient compliance with the requiring of a return by the Comptroller of Income Tax. Counsel for the Comptroller agreed with the contention of the taxpayer and I decided accordingly.

Order accordingly.

GOVERNMENT OF THE FEDERATION OF MALAYA v. WONG HOI ONN.

[Orig. Civ. Juris. (Taylor, J.) March 20, 1952]

[Kuala Lumpur — Civil Suit No. 16 of 1951]

Gaming — Betting and Sweepstakes Duties Ordinance — Claim for duty payment — Whether officials of illegal association personally liable — Claim out of assets.

The defendant, as President of an association subsequently declared illegal and wound up, was found to be the only person managing and controlling the association. He was sued for unpaid duty on sweepstakes promoted in the name of the association.

Held, that the President in this case was also either the Secretary or a similar official.

Held further, that the Betting and Sweepstakes Duties Ordinance is a charging statute and must be strictly construed; the duty is charged on the amount subscribed from ticket money and the promoter, secretary or similar official cannot be personally liable in debt for unpaid duty. Where the association has been wound up such unpaid duty may be claimed out of assets in the hands of the Official Assignee who wound up the association.

ACTION.

A. M. Webb (Federal Counsel) for the plaintiffs.

F. G. Charlesworth for the defendant.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Taylor, J. : — In this action the Federal Government sued Wong Hoi Onn for $64,000 odd, being the duty under the Betting and Sweepstakes Duties Ordinance, 1948, on five sweepstakes conducted during 1950 in the name of the Selangor Health and Strength Association.

The facts shortly are that the Association was founded many years ago as an athletic club. It was revived after the war and at the material time had a small club house in the suburbs of Kuala Lumpur with a boxing ring, equipment for weight-lifting and two badminton courts. The defendant was the President. According to the rules, the Association was to be managed by a Committee consisting of the President, the Secretary, the Treasurer and eight elected members. It was, however, in fact directed and managed almost entirely by the President alone. There was a Nominal Secretary but he was in fact a paid full-time clerk. The Committee did not function. The rules provided for active members who paid an entrance fee and a subscription of $2 a month, and for associate members who paid $1 a year but no entrance fee. The total membership is stated to have been about 50,000 and the club had an office in the town which at one time was staffed by forty clerks. Obviously, such an Association could not have even 1,000 members who actually took part in boxing. The truth of the matter is that a few dozen members took part in the boxing and weight-lifting and possibly a few score of their friends came to watch and play a little badminton. The Association was really two associations in one — a small but genuine athletic club with a very large sweepstake club operating in conjunction, under the same name, and the whole concern managed and controlled by one man, the President.

In 1950 some difficulties arose; some of the officers were prosecuted; the proceedings extended over some months but ended in acquittal of all the accused, meantime, payment of duty on the sweepstakes had fallen into arrears and finally the Association was dissolved under statutory powers and liquidated by the Official Assignee; after payment of sundry creditors and costs he has a disposable surplus of about $6,000 only. The Government appear to be in the exasperating position in which banks and other large concerns

occasionally find themselves; having been unsuccessful in litigation they find that the opposition was financed out of their own money.

The Government pleaded that the defendant is indebted to them in $64,000, being unpaid duty on the sweepstakes. Section 2(2) of the Ordinance provides:—

"On every sweepstake promoted by any..... Association.....there shall be charged a duty of 15% of the amount contributed towards such sweepstake."

Section 3 provides that the promoter shall render a statement of each sweepstake and pay the duty to the Collector. "Promoter" is defined as the Secretary of the Association .... or the individual who, or the Secretary, (or similar official) of any Association which, has promoted any sweepstake.

Section 5 enacts that the duty shall be a debt due to the Government and recoverable as such. Section 7 provides that a promoter who fails to deliver the required statement may be fined. There is, however, no penalty for failing to pay the duty. It is clear that the duty is recoverable by action but the Ordinance does not say that it may be recovered from the promoter or, for that matter, from the Association. In short, the statute is not clear as to who is to be sued.

The defendant pleads that the duty was owed by the Association which has since become an unlawful society. He denies that he is indebted to the Government in respect of the duty.

The questions are, first, whether the defendant was the promoter of the sweepstake within the meaning of the Ordinance and, secondly, whether the Ordinance charges the duty on the private purse of the promoter.

In the course of the argument it was conceded by counsel for the defendant that in the case of a very small club, such as a village goose club, the functions of President, Secretary and Treasurer might well all be performed by one man, by whatever title called, in short by a committee of one, all the other members being ordinary members taking no part in the management. I do not think that there is any difference in principle between a large and a small concern. On the evidence I find that at the material period all the affairs of the Association were managed by the defendant as a committee of one, the large clerical staff functioning under his orders and control. I therefore find that though he had the title of President and although there was a separate titular Secretary, the defendant was in fact either the Secretary of the Association (in addition to other duties) or a "similar official."

There is some difficulty in construing the words "an individual who" in the definition section. I do not think that they are applicable to the facts of this case.

The scheme of the Ordinance is clear. The intention is that the duty shall be appropriated from the amount subscribed, that is from ticket money, and set aside; the promoter then draws up his statement and he should pay the duty before, or at the same time as, he pays out the prize money. The whole difficulty in this case arises because the provisions of the law were not carried out and the statute does not say explicitly what the consequences of failure to pay in that way are to be.

The statute is a charging statute and must be construed strictly. I am clearly of opinion that the duty is charged on the fund. Suppose, for the sake of argument, that the treasurer of a society had a separate banking account, in his own personal name alone, for a sweepstake fund and that he died after the draw and after having rendered his statement but before the race was run. He himself might well be a person without means. In such a case I have no doubt that the Government could by proper proceedings recover the duty from the fund in the bank.

No duty or tax can be charged upon an individual without express words. In this statute I can find no word apt to charge the duty on the privy purse of the promoter. In my opinion, therefore, the plaintiff Government have failed to establish that the defendant is personally indebted to them.

This is not to say that the Government could not in any circumstances recover from a promoter even if he had parted with the fund. At the conclusion of his final address counsel for the plaintiff Government said:— "If a promoter receives the money subscribed and distributed it without appropriating the required amount for duty it is idle for him to say that he has not the money then." The first part of this submission was, in my view, an argument which could have supported a claim in conversion. Also, it is possible that since the promoter is under a statutory liability to account he could be sued for an amount due from him on the account; alternatively he might perhaps be sued, in law, for money had and received by him to the use of the plaintiff or, in equity, as a trustee for the plaintiff of the amount of the duty. None of these possible

causes of action was pleaded and the defendant therefore had not an opportunity to negative the view that under one or other of these headings he might be liable. As I am clearly of opinion that he was not personally liable in debt, I gave the plaintiffs an opportunity to consider whether they wished to amend; they did not do so; possibly they felt that it was then too late.

I would add that it seems to me at least possible that the Government could sue either the Association or the Promoter, or perhaps both, together or successively, according to circumstances, though manifestly they could not recover the whole amount from both, and either might bring in the other as a third party. I think section 5 was intentionally enacted in very wide terms so as to leave several of these possibilities open.

The defendant also pleaded that the remedy of the Government was barred because the remaining funds of the Society are held by the Official Assignee, subject to the Bankruptcy law. This is correct up to a point but in my opinion the rules which confer and impose on the Official Assignee the powers and duties necessary to liquidate the Association do not incorporate the provisions of section 9(1) of the Bankruptcy Enactment (Cap. 55) which deprives creditors of all remedies except proof. In any event the bankruptcy of a principal debtor does not prevent the creditor from suing the surety or any other party who may be contingently liable. I think this plea is irrelevant to the plaint. The Government were not suing the defendant as the controller of the funds of the Association; they intended to sue, and did sue, him in his private and personal capacity. I can see nothing to prevent either the Government or the defendant from having recourse to the fund in the hands of the Official Assignee.

However that may be, I decide this case on the ground that in my view the duty is not explicitly charged on the private purse of the promoter and as this is the only cause of action pleaded the Government cannot succeed on this plaint. The costs must follow the event.

Order accordingly.

HURBAJAN SINGH v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Taylor, J.) March 21, 1952]

[Selangor — Criminal Appeal No. 28 of 1951]

Divorce — Personal law — Sikhs — Validity of divorce.

Among Selangor Sikhs divorce is recognised as a variation of Hindu law by usage or custom. A divorce by mutual consent, if evidenced in writing, sets the woman free to contract another formal and valid marriage.

Case referred to :—

(1) *In re Tan Soh Sim, decd.* (1951) M.L.J. 21.

CRIMINAL APPEAL.

R. P. S. Rajasooria for the appellant.

J. V. M. Shields (Federal Counsel) for the Public Prosecutor.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Taylor, J. : — This is a criminal appeal from a conviction by a Magistrate but the question to be decided is a question of the personal law of Sikhs. The history of the matter and the general principles have lately been restated by the Court of Appeal in *Re Tan Soh Sim*[1] The law relating to persons in this country deals with members of the different communities in much the same way as the law of England deals with persons domiciled outside England; questions of divorce, guardianship, and the like, are decided according to the law or custom of the community to which the parties belong.

The facts of the case are that the accused, who is a young Sikh, took away the recently married wife of another Sikh from Kuala Lumpur to Kelantan. Despite immediate complaint and vigorous enquiry the couple remained untraced for many months but eventually they were arrested and the accused was charged in the Magistrates' Court in Kuala Lumpur with enticing away a woman whom he knew to be married to another man.

At the trial it was, of course, necessary for the prosecution to prove strictly a valid marriage; they adduced a considerable body of evidence to show that the young woman, who is the daughter of a well known priest, had been publicly betrothed to the complainant at a ceremony at a Sikh temple in Kuala Lumpur and subsequently married to him at another public ceremony in a different temple. Ample evidence was given to show that the ceremonies were usual and appropriate to a valid marriage and there would have been no doubt, had it not also appeared that the girl had previously been married to a different man. It was therefore necessary for the prosecution to show that the previous marriage had been validly dissolved.